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Supreme Court, U.S.
FILED

10-473 SEP 8- 2010

OFFICE OF THE CLERK

No.

SUPREME COURT OF THE UNITED STATES

Robert Grundstein Esq.

Petitioner

vs.

State of Ohio Attorney General Richard Cordray

Ohio Supreme Court

Respondents

On Petition for Writ of Certiorari to the Ohio State Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Is the Ohio Vexatious Litigator Statute, ORC 2323.52, Constitutional?
2. Does the Ohio Vexatious Litigator Statute Violate Section 35 of the Federal Judiciary Act of 1789?

Petitioner believes the Ohio Vexatious Litigator statute is badly conceived and subject to enormous abuse in a system where the judiciary is politicized. It makes no reference to objective criteria and removes the right of appeal to challenge even the first ruling under the statute.

Once a party is listed as vexatious, he or she is permanently tainted in the entire state of Ohio and any other jurisdiction where he chooses to practice. As it stands, the Ohio vexatious litigator statute is prone to use as a vendetta to silence parties who interfere with private agendas.

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Constitutional and Statutory Provisions

1. First Amendment
2. Fifth Amendment
3. Fourteenth Amendment
4. Judiciary Act of 1789, Section 35
5. Equal Protection (Fourteenth Amendment)

Jurisdiction

The Ohio Supreme Court decided my case on June 14, 2010. There was no published opinion. The order is attached.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Statement of the Case

Ohio Supreme Court Refused Writ Filing

This petition originates from case number 03 CV 513849, originally filed in Cuyahoga County Ohio Court of Common Pleas/Judge Lillian Greene. I have been a licensed attorney in Washinton State since May 25, 1991.

The First Case Petitioner (Grundstein) Ever Filed In Ohio

03 CV 513849 was dismissed on procedural grounds in late 2003 and appealed in the Ohio 8th District Court of appeals. The appeal was successful and the case was remanded to J. Lillian Greene in February of 2005. It was the first case Grundstein (I) ever litigated in Ohio and was on behalf of his newly widowed, 85 year old mother who consigned collectibles and art-work to defendant in the lower court for which she was not paid. The consignment was subsequent to the departure of her beloved husband and my father, Professor of Law and Management, N.D. Grundstein, PHD, JD.

The original court Defendant never filed an answer in this case but J. Greene would not grant default judgment. Petitioner Grundstein filed motions for hearings, none of which were granted. On July 25, 2005, the J. Greene granted lower court defendant motion to have Grundstein declared a vexatious litigator under ORC 2323.52.

An action under ORC 2323.52 cannot be made by motion. The statute requires a new action with a Complaint, Summons and proper service, none of which took place. Motions to point this out and vacate the order were made, but disregarded. In addition, ORC 2323.52 is for serial filers of actions without merit. This was the first case I ever filed in Ohio.

On August 15, Petitioner Grundstein filed a timely notice of appeal to the Ohio Eighth District Court of Appeals and asked for "leave to proceed" under ORC 2323.52. A briefing schedule was generated by the appellate court and my brief was filed on time. Oral arguments were set by the appellate court for March, 2006.

I drove from Vermont to Ohio on the day appointed for oral argument. The banc of judges said they changed their minds and would not hear the appeal and would not grant "leave to proceed".

Subsequent to that, the county prosecutor made a motion to have me declared vexatious in the Supreme Court of Ohio. This was also granted.

I submitted a Writ of Prohibition and Mandamus to the Ohio Supreme Court. On June 14, 2010, the Ohio Supreme Court refused to accept or consider the writ.

The Ohio Supreme Court should have considered my writ and allowed it to be filed. To have done otherwise is Unconstitutional error.

I have been denied all appellate review and 90% of original actions since I was declared vexatious by J. Lillian Greene. I am essentially banned from Ohio courts.

It was error for the Ohio Supreme Court to not consider my writ or allow it to be filed. On that basis, I submit this writ application.

I have been denied all appellate review and 90% of original actions since I was declared vexatious by J. Lillian Greene. I am essentially banned from Ohio courts.

Reasons For Granting Petition

A

Constitutional Objections

Petitioner believes ORC 2323.52 fails because it is vague, overbroad and violates the right of meaningful access to the courts, the 1st amendment right to petition government, the 1st amendment restriction against prior restraints and the 5th and 14th amendments.

As it stands, the statute is a very efficient vehicle to discredit and disenfranchise a competent litigant who interferes with a court agenda or preference. It also bars appellate review and makes appeal contingent on the discretion of a reviewing court. This contingency even applies to an initial appeal to review a fresh order by which a party has been declared "vexatious".

Statistically, a person who is declared vexatious is barred from the courts unless he or she hires an attorney.

B

The Ohio Statute is Significantly Different From All Other Similar State Statutes

Five states—California, Florida, Hawaii, Ohio and Texas—have enacted Vexatious Litigant statutes. While similar in many ways, the laws are not uniform in their approaches to applicability, definitions, and sanctions. For example, all five state laws apply only to litigants who file civil actions in *propia*

persona (or pro se), but the laws differ in their definitions of a vexatious litigant. In California, Hawaii, and Texas, one qualifies as a vexatious litigant when five or more adverse judgments have been entered against the litigant in a seven-year period (California Code, Section 391, 2006; Hawaii Statute, Section 634J-1, 2006; Texas Civil Practice, Section 11.054, 2006). In Florida, the time period is only five years (Florida Statutes, Section 68.093, 2006). In Ohio, however, neither a case minimum nor a time period is specified.

In contrast, the Ohio statute defines a "vexatious litigator" as "any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action" (Ohio Code, Section 2323.52, 2006). "Vexatious conduct" is defined as any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action

1

The Ohio Statute Does Not List Number of Offenses Prior to Application of Statute

or

Adequately Describe the Nature of Offenses by Which Someone is Declared Vexatious

ORC 2323.52 is significantly different from all other state "vexatious litigator" statutes. All other states with "vexatious" statutes that require pre-filing approval for new complaints

quantify the number of offenses before which a party can be subject to pre-filing requirements. Ohio's statute does not list the number of offenses or adequately describe what offenses make one vexatious. ORC 2323.52 uses the term "obviously" to injure or harrass" as a criteria. The term "obvious" has no meaning. There is no reference to res judicata, collateral estoppel or filing the same materials which were disposed by a prior order.

The Ohio statute also uses the term "vexatious" to define what it means by "vexatious" behavior.

2

The Ohio Statute Does Not Limit The Time Over Which Filing Restrictions Can Be Applied

and

Does Not Limit Pre-Filing Restrictions to A Particular Party and Set of Facts

ORC 2323.52 allows a court of first resort to permanently enjoin a party from filing in any county, state or appellate court without prior approval from the declaring court. Most other states will set a time limit and/or limit the pre-filing restriction to filings against a particular party pertinent to a particular transaction or set of facts. It is legitimate to require pre-filing procedures when a party has been proven to relitigate settled matters against a particular party as a means to intimidate or annoy that party. Ohio does not limit it's pre-filing requirements in terms of time, subject matter and specific parties privy to prior, resolved

litigation.

3

ORC 2323.52 Extends Its Restrictions to the Appellate Court

and

Allows the Lower Court to Curtail Even First Appellate Review

Once a lower court declares someone vexatious under ORC 2323.52, the appellate courts automatically gain the right to impose pre-filing restrictions in their own courts. The appellate court can (and does) even refuse to recognize the statutory first right of appeal after a lower court has declared someone vexatious. This means that a lower court can effectively deny or make uncertain appellate review of it's own, initial and incorrectly determined decision.

In a politicized judiciary such as Cuyahoga County, Ohio, the potential for abuse is enormous. The FBI has chosen Cuyahoga County, Ohio as the most corrupt county in the U.S. this year.

The right of appeal is a statutory right. To violate this right without due process violates the 5th and 14th amendments by which statutory rights are property rights.

C

The Ohio Statute Violates Suggested Federal Standards for Application of "Gatekeeper" Orders

"Cromer v. Kraft Foods North American, Incorporated", 390

F.3d 812 (4th Cir. 2004), is the leading Fourth Circuit case on the standards for issuance of a gatekeeper order. In addition to adopting the Safir list of factors to be considered the court offered this guidance:

- A pre-filing injunction is a drastic remedy to be used sparingly and only when exigent circumstances justify it.
- Use of such measures against a pro se litigant should be approached with particular caution.
- The pre-filing injunction must be narrowly tailored to fit the circumstances. (In "Cromer" the injunction was NOT narrowly tailored because it restricted the defendant from filing any lawsuit without court approval although his history showed only vexatious litigation related to his employment discrimination lawsuit.)
- The litigant must be given notice and an opportunity to be heard before a gatekeeper order is entered.

D

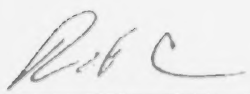
The Ohio Statute Violates Section 35 of the Federal Judiciary Act of 1789

This act recognizes the right to act pro se in a legal proceeding.

E

The Ohio Statute Violates Equal Protection and Creates an Arbitrary Litigant Status Against Which Constitutional Rights are Curtailed

The Ohio statute assigns a status to a party without the safeguards of objective criteria by which this status is assigned. Without articulated standards in terms of number of offenses and the nature of filing offenses over a specific period of time, the statute will arbitrarily discriminate between those allowed access to the court system on a pro se basis and those who aren't.



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The Supreme Court Of Ohio

Filed Jun 14 2010

Clerk Of Court

Supreme Court Of Ohio

In Re Robert Grundstein v. Melling

On June 3, 2009, this Court found Robert Grundstein to be a vexatious litigator under S.Ct. Prac. R. 14.5(B). This Court further ordered that Grundstein was prohibited from continuing or instituting legal proceedings in this Court without first obtaining leave. On June 7, 2010, Grundstein submitted a motion for leave to proceed to file writ. Upon review of the proffered document the Court finds it without merit. Accordingly.

It is ordered by the Court that Robert Grundstein's motion for leave is denied.

/s ERIC BROWN

Chief Justice